Supreme Court of the United States

OCTOBER TERM, 1938.

Nos. 245-246.

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

ALGOMA LUMBER COMPANY, A CORPORATION, RESPONDENT.

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

FOREST LUMBER COMPANY, A CORPORATION, RESPONDENT.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF CLAIMS.

JESSE ANDREWS,
CARL D. MATZ,
WILLIAM S. BENNET,
Attorneys for Respondents.

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STATEMENT.

By way of answer to the Government's petitions for writs of certiorari to review the judgments of the Court of Claims in these proceedings, and in opposition thereto,

we desire to submit certain suggestions on behalf of the respondents setting forth the reasons why, in our judgment, there is no necessity for the issuance of this extraordinary writ. In keeping with the action of the Government in its petition, we shall make reference to the facts in the Algoma Lumber Company case only, except where the context indicates reference to the Forest Lumber Company case.

The Government's statement of facts omits the following pertinent and important facts:

The payments under the contract relating to timber on unallotted lands and under the contracts with the holders of allotments were not only made to the Superintendent of the Indian School and taken into his books of account but were deposited, when not deposited in the United States Treasury, in private banks in the name of the Superintendent. The banks holding moneys beneficially held for Indian allottees kept no record of the individual accounts, but the funds so held in the name of the Superintendent, in a lump sum, were subject to withdrawal and distribution by him (Rec. 42).

The plaintiff protested the application, effective April 1, 1928, of the advance payments made by it to the Superintendent at the increased unit price (Rec. 29, 31); and the Commissioner directed the Superintendent to retain from all individual Indian accounts, pending the disposition of the plaintiff's protest, sufficient amounts to cover a refund of the increase in the lumber price on all timber cut from allotted lands effective April 1, 1928 (Rec. 31).

THERE ARE NO GROUNDS FOR CERTIORARI.

It is submitted that the contracts here involved, as disclosed by the Record, are so clearly contracts upon which the United States is suable under Section 145 of the Judicial Code that there is no occasion for this Court to review the judgments of the Court of Claims. The jurisdiction of the latter court is clear, we submit, for the following reasons:

1. The title to the land comprising the Klamath Reservation is in the United States, granted that the beneficial interest therein lies in the Indians. This Court, in *Shoshone Tribe* v. *United States*, 299 U. S. 476, and *United States* v. *Shoshone Tribe*, October Term, 1937, No. 668, held that the title to lands ceded to the Indians under just such a treaty as that with the Klamath Indians is in the United States, saying, in the earlier case:

> "Confusion is likely to result from speaking of the wrong to the Shoshones as a destruction of their title. Title in the strict sense was always in the United States, though the Shoshones had the treaty right of occupancy with all its beneficial incidents."

This Court held, further, that a treaty right of perpetual occupancy was not less valuable than the full title in fee, but nothing was held or said in either case in derogation of the long established principle that the legal title to such Indian lands lies in the United States.

2. Everything done concerning the sale of the timber, from the beginning to the end, including the disbursement of the proceeds, was done by officers and agents of the United States.

3. The United States, or an individual, is just as much liable upon a contract made by it as trustee as it would be were the contract not made in a trust capacity.

4. The moneys paid on the contracts, a part of which it is here sought to recover, are the moneys of the United States. *Bramwell v. United States Fidelity & Guaranty Company*, 269 U. S. 483, affirming the decision of the Circuit Court of Appeals for the Ninth Circuit in *Bramwell v. United States Fidelity & Guaranty Company*, 299 Fed. 705.

5. The Congress, in enacting the pertinent statutes, cannot be assumed to have intended that no one should be liable on a contract executed pursuant to Sections 7 and 8 of the Act of June 25, 1910. The Record shows that no contracts for the sale of Indian tribal timber have ever been made in the form and manner prescribed by R. S. 2103 (set forth in Appendix), which is the only statute prescribing a method for the making of Indian contracts.

6. As was pointed out by the Court of Claims in its opinion in the Forest Lumber Company case (Rec. (No. 246) 37), "any contract made by them (the Indians) would not be binding; and, as it would not be binding upon the Indians, it would not be binding upon the other party and would be a nullity."

7. With reference to payment for timber cut from allotted lands: Advance deposits were made by the respondents to the Superintendent against which the latter charged the sums due for timber as it was cut. It could not be told, in advance, whether the timber

would be cut from allotted or unallotted lands. Moneys due for timber cut from allotted lands were later credited to the individual Indians on the Superintendent's books, but the moneys themselves remained on deposit in the Superintendent's name except to the extent that they were passed to the individual Indians through disbursements made by the Superintendent.

The Commissioner directed the Superintendent to retain, out of the accounts of individual Indians, amounts sufficient to cover the protested increase. Since the Government asserted the right to retain, and did retain, the amount of the contested increase, the Court of Claims was clearly correct in directing that the amounts retained be paid over to the respondents.

Furthermore, it would appear that the sum involved is insignificant. The Government and the respondents, in briefs on file in the Court of Claims, agree that the amount of money involved in the instant case is $116.46, being the sum produced by multiplying the timber cut from unallotted lands during the entire period by the contested increase of 40¢. The Government and the respondent Forest Lumber Company differ as to the exact quantity of timber cut in the Forest Lumber Company case from allotted lands, but the higher of the two amounts is a very small fraction of the amount of the judgment.

CONCLUSION.

It is submitted that the decision of the Court of Claims is clearly correct. No authorities are cited by the petitioner which throw doubt upon it.

Wherefore, it is respectfully submitted that the Government's petition for writs of certiorari should be denied.

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APPENDIX.

Section 2103 of the Revised Statutes, now contained in 25 U. S. C. A., Section 81, reads as follows:

"§81. CONTRACTS WITH INDIAN TRIBES OR INDIANS. No agreement shall be made by any person with any tribe of Indians, or individual Indians not citizens of the United States, for the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States, unless such contract or agreement be executed and approved as follows:

"First. Such agreement shall be in writing, and a duplicate of it delivered to each party.

"Second. It shall be executed before a judge of a court of record, and bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs indorsed upon it.

"Third. It shall contain the names of all parties in interest, their residence and occupation; and if made with a tribe, by their tribal authorities, the scope of authority, and the reason for exercising that authority, shall be given specifically.

"Fourth. It shall state the time when and place where made, the particular purpose for which made, the special thing or things to be done under it, and, if for the collection of money, the basis of the claim, the source from which it is to be collected, the

disposition to be made of it when collected, the amount or rate per centum of the fee in all cases; and if any contingent matter or condition constitutes a part of the contract or agreement, it shall be specifically set forth.

"Fifth. It shall have a fixed limited time to run, which shall be distinctly stated.

"Sixth. The judge before whom such contract or agreement is executed shall certify officially the time when and place where such contract or agreement was executed, and that it was in his presence, and who are the interested parties thereto, as stated to him at the time; the parties present making the same; the source and extent of authority claimed at the time by the contracting parties to make the contract or agreement, and whether made in person or by agent or attorney of either party or parties.

"All contracts or agreements made in violation of this section shall be null and void, and all money or other thing of value paid to any person by any Indian or tribe, or anyone else, for or on his or their behalf, on account of such services, in excess of the amount approved by the commissioner and secretary for such services, may be recovered by suit in the name of the United States in any court of the United States, regardless of the amount in controversy; and one-half thereof shall be paid to the person suing for the same, and the other half shall be paid into the Treasury for the use of the Indian or tribe by or for whom it was so paid."